

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ADREA, LLC,

Plaintiff,

v.

BARNES & NOBLE, INC.,
BARNESANDNOBLE.COM LLC, and
NOOK MEDIA LLC,

Defendants.

Civil Action No. 13-cv-4137 (JSR)

**NOTICE OF PLAINTIFF'S MOTION FOR
SUPPLEMENTAL DAMAGES AND ONGOING ROYALTIES**

PLEASE TAKE NOTICE that pursuant to the Individual Rules of Practice of the Honorable Jed. S. Rakoff, Local Civil Rule 7.1, and the Federal Rules of Civil Procedure, Plaintiff moves this Court for supplemental damages to account for all infringing sales made prior to the judgment in this case (Dkt. No. 249), as well as ongoing royalties for post-judgment infringement.

This motion is brought under FED. R. CIV. P. 59(e), to alter or amend judgment, and/or under FED. R. CIV. P. 52(b), to make additional factual findings, based on the availability of new evidence—namely, Defendants' updated sales data through the date of judgment. Alternatively, the motion is brought under Rule 60(a) to correct an omission or oversight in the judgment based on the Court's previously-stated intention to address post-verdict damages after the verdict from the first trial had been clarified. *See* Dkt. No. 202 (Mar. 14, 2016 Order) at 3.

The relief sought by this motion includes: (i) an order for B&N to produce updated sales data for all Nook product sold from July 1, 2014 (*i.e.*, the latest sales data produced by

Defendants) to the judgment on January 12, 2017; (ii) an award of supplemental damages for all pre-judgment Nook sales at a per-unit rate of \$0.051; and (iii) the establishment of an ongoing royalty rate of \$0.102 per device for post-judgment sales.

In support of this motion, which was first brought orally on January 26, 2017, Plaintiff relies upon this Notice of Motion, its Memorandum of Law in Support of Plaintiff's Motion for Supplemental Damages and Ongoing Royalties, all prior pleadings on file in this action, any matter judicially noticeable, and all such other documents and matters as may be presented to the Court.

A copy of this motion was served on all parties on February 2, 2017. Pursuant to the briefing schedule set by the Court, Defendants' opposition is due no later than February 16, 2017, and Plaintiff's reply submission is due by February 23, 2017.

Dated: February 2, 2017

Respectfully submitted,

/s/ Colin Cabral
Steven M. Bauer
Brendan Cox (*pro hac vice*)
PROSKAUER ROSE LLP
One International Place
Boston, Massachusetts 02110
(617) 526-9600 (telephone)
(617) 526-9800 (facsimile)
sbauer@proskauer.com
bcoc@proskauer.com

Colin Cabral
PROSKAUER ROSE LLP
2049 Century Park East, Suite 3200
Los Angeles, CA 90067
(310) 284-5611 (telephone)
(310) 557-2193 (facsimile)
ccabral@proskauer.com

Attorneys for Plaintiff ADREA, LLC

CERTIFICATE OF SERVICE

I certify that on February 2, 2017, I caused a copy of the foregoing document to be served upon counsel of record for Barnes & Noble, Inc., barnesandnoble.com llc, and Nook Media LLC by electronic mail.

Louis S. Ederer
Susan Lee Shin
Maxwell Charles Preston
ARNOLD & PORTER LLP
399 Park Avenue
New York, NY 10022-4690
Telephone: (212) 715-1000
Facsimile: (212) 715-1399
louis.ederer@aporter.com
susan.shin@aporter.com
maxwell.preston@aporter.com

*Attorneys for Defendants Barnes & Noble, Inc.,
barnesandnoble.com llc, and Nook Media LLC*

/s/ Colin Cabral
